78-1213

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

JOHN P. PARIS,

Petitioner

v.

LAWRENCE E. COOPER, et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

APPENDIX

RAYMOND A. CUNNINGHAM, ESQ.
CUNNINGHAM & CLARKE
341 W. Ponce de Leon Avenue
Decatur, Georgia 30030

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IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR GULF COUNTY, FLORIDA

CASE NO. _____

DIVISION _____

LAWRENCE E. COOPER,

Plaintiff

v.

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES

C O M P L A I N T

Plaintiff, Lawrence E. Cooper, sues defendant, John P. Paris, individually, and doing business as Paris Properties, and says:

1. This is an action for a declaratory judgment pursunt to the provisions of Florida Statutes, Chapter 86, to cancel and/or rescind promissory notes, and to recover damages in an amount that exceeds $2,500.

2. Defendant John P. Paris, doing business as Paris Properties ("defendant"), is a resident of the State of Georgia, and is operating, conducting, engaging in or carrying on a business or business venture in the State of Florida, within the intent and meaning of Florida Statutes, Section 48.181 and Section 48.193, as hereinafter more fully appears.

Count I

3. In or about August, 1973, John P. Paris, doing business as Paris Properties, contacted plaintiff in an attempt to induce plaintiff to purchase the real estate ("the property") described in Exhibit "A" hereto, located in Gulf County, Florida, and then belonging to Hilton & Associates, a Florida partnership.

4. From and after August, 1973,

when defendant initially contacted plaintiff, defendant, with the intent and expectation of collecting or receiving a commission, compensation, or valuable consideration for his services, directed and negotiated the closing and sale of the property from Hilton & Associates, a Florida partnership consisting of L. Charles Hilton, Jr., Charles E. Faircloth and William C. Grimsley, Jr. ("Hilton & Associates"), to plaintiff.

5. On or about September 15, 1973, plaintiff, Hilton & Associates and defendant entered into a Contract for Purchase and Sale of Real Estate, a copy of which is attached hereto as Exhibit "B", and by reference made a part hereof, wherein plaintiff, as consideration for the services of defendant, agreed to pay to defendant at the closing of the transaction, the sum of $100,000 in cash,

and $215,070 in the form of a promissory note, as and for a commission for services rendered by defendant in assisting in the negotiation and closing of the sale of the property to plaintiff.

6. On or about December 10, 1973, plaintiff, Hilton & Associates and defendant, entered into the Modification and Contract for Purchase and Sale of Real Estate attached hereto by copy as Exhibit "C" and by reference made a part hereof.

7. On or about February 8, 1974, plaintiff, HIlton & Associates and defendant, by letter agreement, a copy of which is attached hereto as Exhibit "D," and by reference made a part hereof, agreed that, notwithstanding the provisions of paragraph 15 of the agreement attached hereto by copy as

Exhibit "B," plaintiff would, at the closing of the sale of the property, execute a promissory note in the amount of $215,070, payable to Hilton & Associates, and that the note would then be assigned without recourse by Hilton & Associates to defendant.

8. At the closing of the sale of the property to plaintiff, on or about February 11, 1974, plaintiff executed and delivered to defendant a promissory note in the principal amount of $75,000, an unexecuted copy of which is attached hereto as Exhibit "E," and by reference made a part hereof, the original of which note is or may be in the possession of defendant, together with a promissory note in the principal amount of $215,070, an unexecuted copy of which is attached hereto as Exhibit "F," and by reference made a part hereof, the original of which

is or may be in the possession of defendant.

9. In addition to the promissory notes attached hereto by copies as Exhibits "E" and "F," plaintiff paid to defendant, in cash, the sum of $25,000 at the closing of the sale of the property to plaintiff, which $25,000, together with the promissory note in the principal amount of $75,000, a copy of which is attached hereto as Exhibit "E," fulfilled plaintiff's obligation to pay $100,000 to defendant pursuant to paragraph 15 of Exhibit "A" attached hereto.

10. The $25,000 cash payment made by plaintiff to defendant at the closing, together with the amounts represented by the promissory notes attached hereto by copies as Exhibits "E" and "F," constitute the payment to

defendant by plaintiff of a 10% real estate brokerage commission for his services in negotiating the closing and sale of the property to plaintiff, based upon the total sales price of the property of $3,150,700.

11. Although the promissory note attached hereto by copy as Exhibit "F" was made payable to Hilton & Associates, it was endorsed without recourse by Hilton & Associates, it was endorsed without recourse by Hilton & Associates at the closing to defendant, which transaction constituted a mere contrivance, artifice or device to circumvent the provisions of the Florida Real Estate License Law, Florida Statutes, Chapter 475.

12. At all times material hereto, during the time of the negotiation and sale of the property to

plaintiff, and the collection by defendant of a real estate broker's commission for that sale, as hereinbefore alleged, defendant was not a licensed real estate broker under the laws of the State of Florida, as required by Florida Statutes, Section 475.13, which fact was then unknown to plaintiff.

13. By reason of defendant's failure to procure a real estate broker's license in the State of Florida, he was not, and is not, entitled to demand or collect any commission for the sale of the property, and the contract between plaintiff and defendant for the payment of a real estate broker's commission is void, violative of the public policy of the State of Florida established in Florida Statutes, Chapter 475, and is incapable of enforcement.

14. Defendant, by letters dated

April 1, 1975, copies of which are attached hereto as Exhibits "G" and "H," has declared plaintiff in default on the notes attached hereto as Exhibits "E" and "F," and plaintiff is uncertain of his rights and remedies pursuant to the Florida Real Estate License Law, Florida Statutes, Chapter 475, and there is an actual, bona fide dispute with reference thereto which requires a judicial determination of plaintiff's rights.

15. Plaintiff has no adequate remedy at law.

Count II

16. Plaintiff specifically realleges and incorporates herein by reference the allegations of paragraphs 1 through 15 hereof.

17. Pursuatn to the terms of the contracts attached hereto by copies as Exhibits "B," "C" and "D" and the

promissory notes attached hereto by copies as Exhibits "E" and "F," plaintiff has paid, and defendant has accepted monies totaling $37,904, which sums are rightfully the property of, and should be returned to plaintiff, in that the sole consideration for the payment of said sums, and for the execution and delivery of the said promissory notes was the performance by defendant of services in violation of the laws and public policy of the State of Florida.

WHEREFORE, plaintiff prays the Court order, adjudge and declare:

1. That the defendant, because of his violations of the provisions of the Florida Real Estate License Law, is not entitled to maintain an action on, or to collect any sums on account of the contracts attached hereto by copies as Exhibits "B," "C" and "D," and the

promissory notes attached hereto by copies as Exhibits "E" and "F," and that as between plaintiff and defendant, those agreements are void, cancelled and of no force and effect;

2. That the defendant shall remit to plaintiff all monies received by him pursuant to the aforesaid agreements between the parties, together with interest thereon, and the costs of this action.

3. That plaintiff have such other and further relief as may be proper.

MAHONEY, HADLOW, CHAMBERS & ADAMS

By: S/WILLIAM E. WILLIAMS

Attorneys for Plaintiff

Post Office Box 5617

Tallahassee, Florida 32301

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff

V.

JOHN P. PARIS, ind. &
d/b/a PARIS PROPERTIES,

Defendant

Case No. 76-15

MOTION TO DISMISS

COMES NOW the Defendant, JOHN P. PARIS, by and through his undersigned attorneys, and, appearing specially and not generally, for the sole purpose of contesting the jurisdiction of this Court, respectfully moves this Court for the entry of an Order, dismissing the Complaint filed against him herein.

As grounds therefor, said Defendant would show this Court that there is lack

of jurisdiction, insufficiency of Process, and insufficiency of service of Process, in that the Complaint and attachments show on their face that Plaintiff is attempting to sue in Florida upon a transaction that occurred in Georgia, between Georgians, and that this Court is therefore without jurisdiction of this Cause.

Further, Defendant would show this Court that he is a resident of the State of Georgia, and that Plaintiff is a resident of the State of Georgia, and, since the Complaint and attachments show that the subject matter was in fact a Georgia transaction, no predicate exists for service of Process upon Defendant in this Cause.

In addition, Defendant would show this Court that this Court lacks jurisdiction over the subject matter, as

neither the Florida Statutes nor the Florida common law provide a basis for suit in Florida for interpretation of or application of legal documents purporting to affix rights jointly between Parties solely from another state, concerning instruments executed in another state, namely, the State of Georgia.

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON

Attorneys for Defendant

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, P. O. Box 5617, Tallahassee, Florida, this 13th day of February, 1976.

By: S/JERRY W. GERDE, ESQ.

406 Magnolia Avenue

Panama City, Florida.

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR GULF COUNTY, FLORIDA

CASE NO. 76-15

DIVISION: CIVIL

LAWRENCE E. COOPER,

Plaintiff

v.

JOHN P. PARIS, Ind. & d/b/a PARIS PROPERTIES,

Defendant

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Comes now defendant, JOHN P. PARIS, Individually and doing business as PARIS PROPERTIES, and submits the Affidavit attached hereto as Exhibit "A" in support of Defendant's motion to dismiss in the above-styled case.

This 6th day of April, 1976.

DAVENPORT, JOHNSTON, HARRIS GERDE & HARRISON

By: S/JERRY W. GERDE

Attorneys for Defendant

HURT, RICHARDSON, GARNER & TODD

By: S/ROBERT B. WEDGE

Attorneys for Defendant

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT, IN AND FOR GULF COUNTY, FLORIDA

CASE NO. 76-15

DIVISION: CIVIL

LAWRENCE E. COOPER,

Plaintiff

v.

JOHN P. PARIS, Ind. & d/b/a PARIS PROPERTIES,

Defendant

STATE OF GEORGIA

COUNTY OF FULTON

A F F I D A V I T

In person appeared before the undersigned officer authorized to administer oaths, JOHN P. PARIS, who on oath states as follows:

(1) That at all times referred to herein he was a resident of the State

Exhibit "A"

of Georgia, and not of the State of Florida, with his residence being in ATlanta, Fulton County, Georgia.

(2) That at all times referred to herein he owned and operated an individual proprietorship known as Paris Properties, located in Atlanta, Fulton County, Georgia. The services engaged in by Affiant and Paris Properties include owning and managing real property, acting as real estate broker in sales of real property and acting as real estate consultant for purchasers and sellers on various types of real estate transactions.

(3) That prior to the real estate transaction which is the subject of the above-styled case, affiant consulted with and advised Lawrence E. Cooper, M.D., with respect to a number of real estate transactions, including at

least six transactions in which he acted as a real estate consultant to Dr. Cooper and at least six transactions in which he acted as the real estate broker. During the course of his business relationship with Dr. Cooper, he was requested by Dr. Cooper to bring to Dr. Cooper's attention parcels of real estate for sale which Dr. Cooper might be interested in purchasing. At all times mentioned herein, Dr. Cooper was also a resident of Atlanta, Fulton County, Georgia, and not a resident of Florida.

(4) That during the summer of 1973, Mr. Lyn Boling of Larwin Mortgage Investors of Atlnata, Georgia, contacted affiant and advised him that the property which is the subject of the above-styled case was for sale. Mr. Boling forwarded to affiant an M.A.I. Appraisal of said property dated May 28, 1973, prepared by

Nolen & associates, INc., and a geological survey of said property.

(5) That affiant telephoned Dr. Cooper for the purpose of bringing said property to his attention. Dr. Cooper informed affiant at that time that he had already heard that this property was for sale and that he was interested in learning more about it. Affiant met with Dr. Cooper and delivered to him the aforesaid M.A.I. Appraisal and geological survey and Dr. Cooper requested affiant to travel to Gulf County, Florida, for the purpose of inspecting the property in question on his behalf. Affiant informed Dr. Cooper at that time that affiant was not licensed under the laws of the State of Florida as a real estate broker and would have to act as Dr. Cooper's personal consultant with respect to said property. Dr. Cooper acknowledged and

understood that fact.

(6) That on August 17, 1973, affiant drove to Panama City, Florida, and on August 18, 1973, he met with Mr. William Grimsley, one of the onwers of said property, and visited the property in the company of Mr. Grimsley. Affiant informed Mr. Grimsley at that time that affiant was not a licensed real estate broker under the laws of Florida, but was representing and acting as a consultant for Dr. Lawrence E. Cooper, who might be interested in purchasing the property.

(7) That affiant returned to Atlanta, Georgia, and met with Dr. Cooper for the purpose of discussing with him the characteristics and general nature of the property in question. Dr. Cooper authorized affiant to prepare a letter proposal to send to Mr. William Grimsley on behalf of Dr. Cooper offering to

purchase the property in question for a certain amount. Affiant did that and after Mr. Grimsley indicated his willingness to accept the price set forth therein, Dr. Cooper engaged the services of the law firm of Arnall, Golden & Gregory, whose Mr. Edward Sprouse proceeded to draw up and negotiate with the sellers of said property the terms of the sales contract for said property.

(8) That Dr. Cooper agreed to pay affiant for all services rendered to Dr. Cooper by affiant as a real estate consultant on the transaction in question, as well as for prior services affiant had rendered to Dr. Cooper, the amount of ten percent (10%) of the purchase price of the property in question.

(9) That after Dr. Cooper's attorneys prepared the sales contract for

the property in question and Dr. Cooper signed said contract in Atlanta, Georgia, affiant personally delivered said sales contract to Messrs. Grimsley, Hilton, and Faircloth of Hilton & Associates, in Panama City, Florida. Affiant returned the same day to Atlanta, Georgia. Following affaint's return to Atlanta, Georgia, Hilton & Associates, in Panama City, Florida. Affaint returned the same day to Atlanta, Georgia. Following affiant's return to Atlanta, Georgia, Hilton & Associates mailed to Mr. Sprouse the sales contract the sales contract in question, which Hilton & Associates had signed and had changed in several respects. Mr. Sprouse made some additional changes to said contract and Dr. Cooper instructed affiant to send the contract to Ronald Feigan, a Florida attorney retained by Dr. Cooper to review

the contract and approved same. Dr. Cooper initialled the changes to the final contract in Atlanta, Georgia. On September 15, 1973, affiant flew to Panama City, Florida, and personally delivered to Hilton & Associates the contract in its final form. Hilton & Associates initialled the changes made by Dr. Cooper's attorneys and affiant returned to Atlanta, Georgia, the same day with the final executed contract.

(10) That the closing of the real estate transaction in question took place in Panama City, Florida, and was handled by Dr. Cooper's attorneys. Dr. Cooper executed all of the closing documents in Atlanta, Georgia, and did not attend the closing of the transaction. Dr. Cooper requested affiant to attend the closing, which he did. However, it was not necessary that affiant be present at said

closing, as affiant did not perform any acts necessary for the closing to take place and did not sign anything at the closing.

(11) That prior to the closing of the transaction in question, affiant and his attorney met with Dr. Cooper and his attorney, Mr. Sprouse, in Atlanta, for the express purpose of discussing how affiant would recieve his consulting fee from Dr. Cooper so that any problems with respect to the Florida Real Estate Brokerage Law would be avoided. Affiant was aware that Dr. Cooper did not have sufficient funds to pay him ten percent (10%) of the purchase price of the property in question in cash at the time of the closing and that a note and fourth mortgage would have to be given by Dr. Cooper to affiant. Subsequent to the meeting among affiant, his attorney, Dr.

Cooper and his attorney, Dr. Cooper's attorney changed the terms of payment for said consulting fee so that Dr. Cooper would execute a note in favor of Hilton & Associates, the sellers, in the amount of $215,070.00, secured by the third mortgage executed by Dr. Cooper in favor of Hilton & Associates, which note would then be assigned by Hilton & Associates to affiant, and Dr. Cooper would deliver to affiant a check in the amount of $100,000.00. Said purchase money note in the amount of $215,070.00 from Dr. Cooper to Hilton & Associates was executed by Dr. Cooper in Atlanta, Georgia. Moreover, the mortgage deed executed on February 8, 1974, by Lawrence E. Cooper in favor of Hilton & Associates expressly provided that said $215,070.00 note was made, executed and delivered in Atlanta, Georgia, for which reason no Florida

documentary stamps were affixed to said note. Said note was then assigned by Hilton & Associates to affiant. Affiant received a check from Dr. Cooper payable to affiant in the amount of $100,000.00. However, there were not sufficient funds in Dr. Cooper's bank account on which said check was drawn to cover that check. Consequently, affiant returned said check to Dr. Cooper, who delivered to affiant a demand note payable by Dr. Cooper to affiant in the amount of $75,000.00 as well as a check in the amount of $25,000.00, a true copy of which is attached hereto as Exhibit "A", showing the same to represent a "consultation fee" on the Gulf County Property. Said $75,000.00 demand note was executed by Dr. Cooper in Atlanta, Georgia, and was delivered to affiant in Atlanta, Georgia.

(12) That the services performed

by affiant in Atlanta, Georgia, for Dr. Cooper in relation to the transactior in question, included, but were not limited to the following: working on a daily basis with Dr. Cooper's attorneys in procuring information for them and attending to details requested by them; daily telephone conversations and numerous meetings with Dr. Cooper and his attorneys with respect to the same; contracting on behalf of Dr. Cooper with Mr. Andrew McColgam, a real estate appraiser, to perform another M.A.I. Real Estate Appraisal on the property in question; setting up an escrow account with the First National Bank of Atlanta, Georgia, for deposit of the earnest money with respect to the transaction in question, as well as subsequent deposits required under extension agreements to the contract; contracting on behalf of

Dr. Cooper to have the land in question surveyed prior to the closing; numerous telephone conversations and meetings with lenders, including, but not limited to, First National Bank of Atlanta, Adair Mortgage Company, C & S Mortgage Company, and Northwest Mutual Life Insurance Company, in an attempt to obtain financing for Dr. Cooper with respect to his purchase of the property in question; initiating contracts on behalf of Dr. Cooper and Law Engineering Testing Company for soil tests which Dr. Cooper had the right to perform under th sales contract in question; working with Dr. Cooper's attorneys in arranging an extension of time on the closing date in order to allow Dr. Cooper more time in which to arrange financing on the subject property; performing no acts within the State of Florida with respect to this

transaction except as otherwise stated above. All dealings between Lawrence E. Cooper, M.D., and affiant took place in Georgia, not Florida. Affiant has not at any time operated, conducted, engaged in or carried on a business venture in the State of Florida.

(14) That affiant has personal knowledge of the facts recited herein, is competent to make this affidavit and gives the same for use by affiant in the above-styled case.

S/JOHN P. PARIS

Sworn to and Subscribed
Before Me, this 6th day
of April, 1976.
S/Elizabeth M. Sanford
[SEAL]
Notary Public
Georgia, State at Large
My Commission Expires Apr. 2, 1977

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff

V.

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES,

Defendant

CASE NO. 76-15

O R D E R

This cause coming on before me to be heard on Motion to Dismiss filed by Defendant, John P. Paris, for lack of jurisdiction, insufficiency of process, and insufficiency of service of process; and the Court having duly considered the motion, heard argument of counsel, and reviewed the affidavits and citations of authorities supplied by counsel, it is,

ORDERED that the Defendant's Motion

to Dismiss be, and the same is hereby, denied.

DONE AND ORDERED in Chambers this 22nd day of April, 1976.

S/LARRY G. SMITH

Circuit Judge

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff

V.

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES,

Defendant

CASE NO. 76-15

MOTION FOR REHEARING

COMES NOW THE Defendant, JOHN P. PARIS, by and through his undersigned attorneys, and, again appearing specially to challenge jurisdiction, and in accordance with Rule 1.530, Fla.R.Civ.Pro., respectfully moves this Court for a Rehearing of Defendant's Motion to Dismiss, based upon jurisdictional grounds, which was the subject of an Order entered by this Court

on April 22, 1976.

As grounds therefor, Defendant would show this Court that admissable evidence relevant to the question of jurisdiction, insufficiency of process, and insufficiency of service of process appears in the test of the depositions taken inthe above-entitled Cause, of MR. L. CHARLES HILTON, JR. and MR. WILLIAM C. GRIMSLEY, JR., which depositions were not available to the Court at the time of argument on Defendant's Motion To Dismiss, but which were taken on April 20, 1976.

In addition, Defendant respectfully urges that jurisdiction and sufficiency of process and service of process are matters of critical importance to the subsequent course and validity of a Cause, and that the ends of justice would be served by this Court's reconsideration

ot its Order of April 22, 1976, pending a review by the Court of the admissable evidence contained in the aforesaid depositions.

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON

Attorneys for Defendant

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Florida, this 28th day of April, 1976.

By: S/JERRY W. GERDE, ESQ.

406 Magnolia Avenue

Panama City, Florida

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,

Plaintiff CASE NO.

V. 76-15

JOHN P. PARIS, ind. & d/b/a PARIS PROPERTIES,

Defendant

O R D E R

THIS CAUSE coming on before me upon Motion for Rehearing and counsel having agreed to submission of the Motion to the Court without oral argument and the Court having considered the Motion for Rehearing and being of the opinion that the same is not well founded nor proper under Florida Rules of Civil Procedure, it is therefore:

ORDERED that Defendant's Motion for

Rehearing be and the same is hereby denied.

DONE AND ORDERED in Chambers this 5th day of May, 1976.

S/ LARRY G. SMITH,
Circuit Judge

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR GULF COUNTY

LAWRENCE E. COOPER,
Plaintiff

V. Case No.

JOHN P. PARIS, Individually and doing business as PARIS PROPERTIES, 76-15
Defendant

L. CHARLES HILTON, JR., et al.,
Plaintiffs

V. Case No.

LAWRENCE E. COOPER, et al., 76-135
Defendants

FINAL SUMMARY JUDGMENT

This cause having come on for hearing on the motions for summary judgment filed in behalf of Lawrence E.

Cooper in the above styled causes, and also on the motions for summary judgment filed in the above styled casues on behalf of John P. Paris, individually and doing business as Paris Properties, with respect to his claims against Lawrence E. Cooper; and the Court having considered the pleadings in these causes, together with exhibits, affidavits, depositions and admissions on file, the Court makes the following findings and conclusions:

1. Lawrence E. Cooper and John P. Paris, individually and doing business as Paris Properties, are both residents of the State of Georgia. Hilton & Associates is a partnership composed of R. Charles Hilton, Jr., Charles Faircloth, and William C. Grimsley, Jr., all residents of Florida.

2. In the summer of 1973, Paris became aware that the property was for

sale through an acquaintance, Boling, of Atlanta, who had received his information from Grimsley. Boling gave Paris a copy of an appraisal and a geological survey of the property. Paris then contacted Cooper for the purpose of bringing the property to his attention. Cooper was interested. Thereafter Paris took a course of action which ultimately led to the formation of a binding contract between the parties for sale of the land by Hilton & Associates to Cooper, and the transaction was later consummated by transfer of title to Cooper in accordance with the contract.

3. Paris first communicated with Grimsley, one of the owners, by telephone. More than one call was made between Paris and Grimsley concerning the property. In about the middle of August, 1973, Paris arranged by telephone to meet

Grimsley in Panama City, in Day County, Florida, to discuss the property and terms of purchase. Grimsley gave Paris an asking price, which he stated included an allocation of ten percent for a broker's commission. Paris made Grimsley aware that he was registered as a Georgia real estate broker, but was not registered in Florida. He also made known to Grimsley the fact that he was acting for a proposed purchaser from Atlanta. Paris, in his affidavit of April 6, 1976, states that he informed Grimsley of the name of the prospect, Dr. Lawrence E. Cooper, which is not denied. At no time did Paris act in behalf of the sellers.

4. According to plans, Paris met Grimsley in Panama City and the two of them drove to the property south of Port St. Joe, in Gulf County, Florida.

They spent about three hours on the property, walking over it, locating the boundaries, and Paris took numerous photos. Paris and Grimsley spent some six to eight hours together total time on this first visit. Paris then returned to Atlanta, discussed the proposed purchase with Dr. Cooper, and with Cooper's authorization prepared a letter proposal to send to Grimsley offering to purchase the property. Grimsley indicated willingness to accept the price offered by Cooper, and the transaction progressed to the point that Cooper engaged attorneys in Atlanta to prepare a formal sales contract. Paris worked with the attorneys in the usual capacity as a broker, obtaining information and attending to details requested by them.

5. Paris then, probably around mid-September, 1973, telephoned Grimsley

and arranged a meeting for himself with Grimsley, Hilton and Faircloth, in Panama City, to go over the proposal with them. As arranged, Paris did meet with them and at that time presented the proposed contract. Several changes and deletions had to be made before final acceptance by all parties. All discussions and negotiations thereafter concerning the contract were between Grimsley, Paris, Hilton and Dr. Cooper's attorneys. At no time did Grimsley, Hilton or Faircloth ever meet with or discuss the matter with Dr. Cooper, nor did Dr. Cooper visit the property prior to closing, or attend the closing.

6. After all changes had been agreed upon, Paris himself took the final draft of the contract to Panama City to have the latest changes approved and initialed by the sellers. Upon

completion, he then returned to Atlanta with the final executed contract. There were later separate modification agreements between the parties, some of which would have no bearing on the present controversy. However, one agreement prior to closing dealt with changes Paris desired to be made in the provisions concerning the manner in which Paris would be paid his compensation for services in handling the purchase. The contract as executed provided for a fee of $315,070.00, (ten percent of the selling price) to be paid by Paris by the purchaser. The form of payment was to be $100,000.00 cash or certified check payable by Cooper to Paris at closing, and the remaining $215,070.00 to be by promissory note from Cooper to Paris, secured by a mortgage on the property. In an effort to avoid the consequences of

the Florida Real Estate Brokers licensing law Paris had the payment provisions changed, so that the $215,070.00 note would be given by Cooper to Hilton & Associates, and by them assigned without recourse to Paris, payment to be secured by the same purchase money mortgage given by Cooper to the sellers. By the express terms of this note it is enforceable only by foreclosure against the property, with no personal liability whatever against Cooper. Paris received this note, and Cooper's check for $100,000.00 at the closing. By prior arrangement, Paris returned this check to Cooper a few days later, who gave him a check for $25,000.00 (which was cashed), and a demand note for $75,000.00.

7. Paris attended the closing of the sale in Panama City, Florida, in February, 1974. Cooper sent a Mr. Brooks

to the closing with a power of attorney to act in his behalf for the purpose of executing any remaining documents necessary for closing. The notes and mortgage were signed by Cooper in Atlanta, and delivered by Brooks in Panama City, Florida, at the closing.

8. Upon the foregoing facts, the Court is compelled as a matter of law, to find and conclude that Paris acted in this transaction as a real estate broker; that he so acted in the State of Florida in his initial contact with the sellers; his examination of the property; in discussing and negotiating the price and terms of the purchase with the sellers; in assisting in the assembling of the sales contract and obtaining its final execution and approval by the sellers in Florida; by his becoming a party to the contract providing for

payment of a ten percent fee to him out ot the total purchase price paid by the purchaser; and by attending the final closing of the transaction in Florida.

9. This was a transaction involving Florida real estate, Florida sellers, essentially negotiated and completed in the State of Florida, and the compensation due Paris under the terms of the contract was a percentage of the purchase price derived from the sale, the major portion of such compensation evidenced by a promissory note enforceable only by foreclosure on the mortgage on the property sold.

10. Certain factual issues have been pointed out by counsel for Paris, but in this Court's opinion their final resolution would not change the legal conclusions drawn from the facts which the Court deems to be established without

genuine issue. These issues, briefly, are whether or not Cooper was aware of the availability of the Florida property prior to being so informed by Paris; whether or not prior to closing Cooper knew that Paris was not a registered broker under the laws of Florida; and whether or not Cooper and Paris had an understanding that payment of the $75,000.00 note would be made only from the proceeds of sale of the property, or from the proceeds of additional financing secured by Cooper. None of these issues would determine whether or not Paris acted as a Florida real estate broker in contravention of the Florida Statutes.

11. Both the $215,070.00 note, and the $75,000.00 note were made and delivered pursuant to a transaction which is prohibited by Florida Statutes, Sections 475.01, and 475.41. Of the

several cases cited by plaintiff, those that lend the greatest support to this conclusion are First Equity Corp. v. Riverside Real Estate Investment Trust, 307 So. 2d 866 (DCA 3rd, 1975), and Hanks v. Hamilton, 339 So. 2d 1122 (DCA 4th, 1976).

The cases cited to the Court by counsel for Paris are: Land Co. of Florida v. Fetty, 15 F. 2d 942 (CCA 5th, 1926); Pearce v. Previews, Inc., 201 F. 2d 385 (CCA 5th, 1953); Pokress v. Tisch Florida Properties, Inc., 153 So. 346, (DCA 3rd, 274 So. 2d 581 (DCA 3d, 1973); Morgan v. Glassman, 285 So. 2d 673 (DCA 3rd, 1973); Dorothy K. Winston and Co. v. Town Heights Development, 376 F. Supp. 1214 (Dis. Ct., D.C., 1974); and Kagan v. Garfinkle, 312 So. 2d 778 (DCA 3rd, 1975). None of these cases hold that conduct comparable to that of Paris in

this case is permissible under the laws of Florida. Nor is there any case cited, in this Court's opinion, that would offer any sound basis for refusing to apply the prohibition of the Florida Statutes above cited.

12. Cooper's claim for reimbursement of $37,904.00 ($25,000.00 on principal, plus payments on interest) paid to Paris has not been established to the point that the Court can state with any degree of assurance whether Cooper should recover that sum, or whether judgment should be entered for Paris on this issue. The Court therefore determines that there are issues to be resolved with respect to this claim, and reserves jurisdiction for entry of a supplemental final judgment on this issue.

From the foregoing, the Court finds

that there is no genuine issue as to any material fact concerning the claims and issues with respect to the $215,070.00 note, and the $75,000.00 note, and that Lawrence E. Cooper is entitled to a judgment on these issues as a matter of law; and it is, therefore,

ORDERED AND ADJUDGED:

1. That John P. Paris' motions for summary judgment be, and the same are hereby, denied.

2. That the motions for summary judgment filed on behalf of Lawrence E. Cooper, except as to his claim for recovery of $37,904.00, be, and the same are hereby, granted.

3. That the promissory note dated February 8, 1974, in the principal amount of $215,070.00 made payable to Hilton & Associates and endorsed without recourse to John P. Paris, and the

promissory note dated February 12, 1974, in the principal amount of $75,000.00 made payable to John P. Paris, be, and they are each hereby, declared unenforceable, cancelled and of no force and effect.

4. The Court reserves jurisdiction of this cause and of the parties hereto, for the purpose of determining the amount of costs, if any, to be taxed against any party, and for the purpose of further proceedings with respect to Cooper's claim for reimbursement of the sum of $37,904.00 received by John P. Paris.

DONE AND ORDERED in Chambers this 25th day of February, 1977, at Port St. Joe, Gulf County, Florida.

S/LARRY G. SMITH, Circuit Judge

Copies furnished to:

William E. Williams
Post Office Box 5617
Tallahassee, Florida

Jerry W. Gerde
405 Magnolia Avenue
Panama City, Florida

L. Charles Hilton, Jr.
Post Office Box 2462
Panama City, Florida

Dean Bunch
Post Office Box 1170
Tallahassee, Florida

Cass D. Vickers
Post Office Box 1876
Tallahassee, Florida

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A.D. 1977

JOHN P. PARIS,
Appellant

v.

L. CHARLES HILTON, JR., et al.,
Appellees

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

CASE NO. FF-470

Opinion filed November 18, 1977.

An interlocutory Appeal from the Circuit Court for Gulf County. Larry G. Smith, Judge.

Jerry W. Gerde of Davenport, Johnston, Harris, Gerde & Harrison for Appellant.

William E. Williams of Mahoney, Hadlow & Adams for Appellees.

RAWLS, Acting Chief Judge

By this interlocutory appeal, Paris seeks review of an adverse final summary judgment granting the rescission and cancellation of two promissory notes held by Paris. The trial court's basis for granting the summary judgment was its finding that the notes were given as consideration for Paris's services as a real estate broker within the State of Florida at a time that he was not registered as a Florida real estate broker pursuant to Chapter 475, Florida Statutes.

Paris and appellee Cooper are both residents of the State of Georgia. In mid-1973, Paris, a licensed real estate broker in Georgia, learned that certain Gulf County, Florida, acreage was on the market. Paris followed an energetic course of action that ultimately led to

the formation of a binding contract for sale of the land between appellees Hi.con & Associates and Cooper. Paris's activities in conjunction with the sale of this property included numerous telephone calls from Atlanta to Panama City, Florida, for the purpose of discussing the real estate and the terms of its sale with one of the owners; a one day visit to the property which included three hours of "walking" the land and photographing it; preparing Dr. Cooper's written offer to purchase, as well as working with Cooper's attorneys on the sales contract; returning to Panama City for further discussions and negotiations concerning the contract; and attending the closing of the sale in Panama City during February of 1974.

Paris received his $315,070 commission in the form of a $215,070 note

secured by the real property and a check for $100,000 from Cooper. By prior arrangement, Paris returned the $100,000 to Cooper and, in turn, was given a check for $25,000 and a demand note for $75,000. Cooper subsequently refused to honor the notes and sought their rescission and cancellation.

The services performed by Paris clearly fall within the provisisions of Section 475.01(2), Florida Statutes, as being duties to be performed by real estate brokers or salesmen. It is undisputed that Paris was not licensed either as a broker or as a salesman in the State of Florida. While it is true that the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal with dishonest or unscrupulous real estate operators, rather than to permit one party to gain

unconscionable advantage by avoiding a just obligation which he has contracted to pay, (1) the statute also protects the public in general from untrained and unsupervised real estate operators. To this end, the legislature of this state has decreed that contracts to pay the commissions of real estate brokers or salesmen, who are not registered as such in the State of Florida at the time such services are rendered, are entirely void as a matter of public policy, and the courts have rulesd that recovery may not be had either under the contract or under the theory of quantum meruit.(2)

The judgment appealed is AFFIRMED.

SMITH and ERVIN, JJ., CONCUR

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(1) Geneva Inv. Ltd. v. Trafalgar Developers Ltd., 274 So.2d 581 (Fla. 3rd

DCA 1973), cert.disch. 285 So.2d 593 (Fla. 1973), appeal after remand 305 So.2d 274 (Fla. 34d DCA 1974). Paris argues strongly that because he is licensed to practice in Georgia, the citizens of Florida are not exposed to the dangers that the statute seeks to restrict. Paris argues, just as strongly, that it is inequitable and unconscionable to allow Cooper to avoid his contractual obligation to pay him his commission for services rendered.

(2) Bradley v. Banks, 260 So.2d 256 (Fla. 3rd DCA 1972); Wegmann v. Mannio, 253 F.2d 627 (5th Cir. 1953), cert.den. 358 U.S. 824, 3 L.Ed.2d 63, 79 S.Ct. 37 (1958).

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A.D. 1977

JOHN P. PARIS,

Appellant,

V. Case No. FF-470

L. CHARLES HILTON, JR.,

et al.,

Appellee

PETITION FOR REHEARING

COMES NOW the Appellant, JOHN P. PARIS, by and through his undersigned attorneys, and, in accordance with Rule 3.14, Fla.App.R., respectfully prays that this Court will enter an Order, allowing a rehearing of this Cause.

As grounds thereform, Appellant respectfully represents to the Court as follows, to-wit:

A. This Court, in its Opinion

of November 18, 1977, ruled that, because JOHN PARIS was not licensed as a broker in Florida, he was precluded from recovering on two Promissory Notes, under authority of Section 475.01(2),F.S.

B. Implicit in the Court's ruling was the apparent determination that the Promissory Notes constituted a "real estate commission;" obviously, counsel for PARIS has been ineffective in our attempts to communicate to this Court that JOHN PARIS was--in actuality--acting as a consultant to Dr. Cooper--and that the Notes were part of a consultant's fee. Even Cooper described (on the check "stub") the initial $25,000.00 payment to PARIS as: "Consultation Fee-Gulf County Property." (Pg.79, Appendix of Appellant).

C. In addition, uncontradicted is the testimony by JOHN PARIS,

describing his previous, intimate involvement with Dr. Cooper in at least 12 real estate transactions (pp. 72 and 73, Appendix of Appellant). Would Dr. Cooper have called on JOHN PARIS again and again, in 12 (or more) real estate transactions, if JOHN PARIS was just a broker, operating independently and at "arms length"? A contrary conclusion, we respectfully submit, is inescapable; JOHN PARIS was acting as a trusted real estate consultant--not as the "broker" whose conduct was the intended focus by the Florida Legislature in adopting Section 475, F.S.

D. Counsel for JOHN PARIS has also been ineffective, in our effort to point out to this Court that the outer boundary of the populace sought to be regulated/governed by the Florida Legislature was the buying public in

Florida, and the real estate brokers in Florida. Is it seriously contended that the Florida Legislature intended to regulate/govern Georgians who might buy property located in Florida, or to regulate/govern Georgia brokers who might sell property located in Florida? Rather, it seems more reasonable that each of the 50 states is authorized to regulate/govern affairs and relations and matters between its citizens; we agree fully that our Florida Legislature intended to regulate Floridians selling real estate, and--equally--to protect people in Florida buying real estate. We are confident that the Legislature of each state intends the same ambit of regulation and protection.

E. Accordingly, if Dr. Cooper had a genuine (or, for that matter, an imagined) complaint of unscrupulous or

dishonest or incompetent conduct by JOHN PARIS, the Georgia Real Estate Commission is located less than a mile from the Atlanta offices of JOHN PARIS, and less than three miles from the Atlanta hospital owned by Dr. Cooper. Again, therefore, we respectfully submit that a situation involving a Georgian dealing with a Georgian--in Georgia--is beyond the outer boundaries of the public policy manifested by the Florida Legislature in adopting Section 475, F.S. Frankly, no other interpretation of Section 475 could explain the decision by the Third District Court of Appeal in Pokress -vs- Tisch Florida Properties, Inc., 153 So2d 346 (3rd.Dist.1963), or in Geneva Inv. Ltd. -vs- Trafalgar Developers, Ltd., 274 So2d 581, and 305 So2d 274 (1974).

F. Finally, counsel's failure heretofore is most apparent in the

language adopted by this Court in its Opinion on Page 2 in the concluding paragraph; this Court wrote, there, that:

> "While it is true that the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal with dishonest or unscrupulous real estate operators. . . ."

We would be in full agreement with that language if it were to contain the additional words underscored below, to-wit:

> "While it is true that the purpose of the Real Estate Licensing Act is to protect the public from being forced to deal <u>in Florida</u> with dishonest or unscrupulous real estate operators . . ."

G. These two additional words would make this Court's language "square"

with the very wording of Section 475.01(2) and would, therefore, enable the Court to perhaps focus on this critically important fact that JOHN PARIS' dealings with Cooper were in Atlanta, Georgia.

WHEREFORE, Appellant JOHN P. PARIS respectfully prays that this Court will rehear, and reconsider, its Opinion filed November 18, 1977.

Respectfully submitted,

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON

Attorneys for Appellant

I HEREBY CERTIFY that a copy of the above has been mailed to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Florida, this 1st day of December, 1977.

BY: S/JERRY W. GERDE, ESQ.

406 Magnolia Avenue

Panama City, Florida

904/763-8421

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, STATE OF FLORIDA

JULY TERM, A.D. 1977

JOHN P. PARIS,

Appellant,

V. Case No. FF-470

L. CHARLES HILTON, JR.,

et al.,

Appellee

O R D E R

PETITION FOR REHEARING having been considered,

IT IS ORDERED that the Petition is hereby denied.

BY ORDER OF THIS COURT dated this 22nd day of December, A.D. 1977.

ACTING CHIEF JUDGE JOHN S. RAWLS,

JUDGE ROBERT P. SMITH, JR.; and

JUDGE RICHARD W. ERVIN, III

SUPREME COURT OF FLORIDA

MONDAY, JULY 31, 1978

JOHN P. PARIS,

Petitioner

V. Case No. 53,241

L. CHARLES HILTON, JR., DISTRICT COURT

ET AL., OF APPEAL, FIRST

Respondents DISTRICT

FF-470

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ENGLAND, C.J., BOYD, SUNDERBERG, HATCHETT

and ALDERMAN, JJ., Concur

cc: Hon. Raymond E. Rhodes, Clerk

Hon. George Y. Core, Clerk

Hon. Larry G. Smith, Judge

Jerry W. Gerde, Esq. of

Davenport, Johnston, Harris,

Gerde & Harrison

William E. Williams, Esq. of

Mahoney, Hadlow & Adams

SUPREME COURT OF FLORIDA

JOHN P. PARIS,
Petitioner

v.

L. CHARLES HILTON, JR., et al.,
Respondents

Case No. 53,241
DISTRICT COURT OF APPEAL, FIRST DISTRICT
FF-470

PETITION FOR REHEARING

COMES NOW the Petitioner, JOHN P. PARIS, by and through his undersigned attorneys, and, in accordance with Rule 9.330, Fla.App.R., respectfully moves this Court for the entry of an Order, authorizing a rehearing of the decision reflected in the Order of this Court dated July 31, 1978, denying the Petition for Writ of Certiorari, filed on behalf of the said JOHN P. PARIS.

As grounds, Petitioner respectfully

alleges:

(1) The Opinion of the District Court of Appeal has regional, and perhaps national, importance, in view of its impact on business and commerce among Florida and all 49 other states;

(2) The Opinion of the District Court of Appeal will restrain and hamper business and commerce between and among Florida and her sister states; no businessmen, manager, factor, agent or realtor outside the State of Florida would safely be able to handle his, or his principal's, property, unless a Florida real estate broker is hired, if the Opinion of the District Court of Appeal is allowed to stand; the anomalies, too numerous to mention, come quickly to mind, in this day of comparatively sophisticated real estate holdings, management and administration;

(3) In denying our Petition for Writ of Certiorari on July 31, 1978, it cannot have been this Court's intention to allow this shadow on interstate commerce and business to exist;

(4) Heretofore, it has been a signal failure on our part to adequately illustrate the chilling impact on trade and commerce that will inevitably occur, if the Opinion of the District Court of Appeal is allowed to stand.

WHEREFORE, Petitioner, JOHN P. PARIS, respectfully prays that this Court will enter its Order, authorizing a rehearing regarding the Petitioner For Writ of Certiorari filed earlier herein.

DAVENPORT, JOHNSTON, HARRIS, GERDE & HARRISON
Attorneys for Petitioner

I HEREBY CERTIFY that copies of the above have been mailed to Hon. Raymond E.

Rhodes, Clerk, First District Court of Appeal, Supreme Court Building, Tallahassee, Fl., and to William E. Williams, Esq., P. O. Box 5617, Tallahassee, Fl., this 9th day of August, 1978.

By: S/ JERRY W. GERDE, ESQ.
406 Magnolia Avenue
Panama City, Florida
904/763-8421

IN THE SUPREME COURT OF FLORIDA

WEDNESDAY, NOVEMBER 8, 1978

JOHN P. PARIS,

Petitioner

v. CASE NO. 53,241

L. CHARLES HILTON, JR., DCA Case No.

ET AL., Respondents FF-470

On consideration of the petition for rehearing filed by attorneys for petitioner, and reply thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

cc Hon. Raymond E. Rhodes, Clerk
Hon. George Y. Core, Clerk
Hon Larry G. Smith, Judge
Jerry W. Gerde, Esquire of
Davenport, Johnston, Harris,
Gerde & Harrison
Terrance E. Schmidt, Esquire of
Mahoney, Hadlow & Adams

§475.01 Fla. Code Ann., §§ (1) and (2)

DEFINITION OF TERMS USED IN CHAPTER

(1) This chapter may be referred to in any legal proceeding as the "Real Estate License Law."

(2) Every person who shall, in this state, for another, and for a compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive a compensation or valuable consideration therefor, appraise, auction, sell, exchange, buy or rent, or offer, attempt or agree to appraise, auction, or negotiate the sale, exchange, purchase or rental of any real property, or any interest in or concerning the same, including mineral rights or leases; or who shall advertise or hold out to the public by any oral or printed solicitation or representation

that such person is engaged in the business of appraising, auctioning, buying, selling, exchanging, leasing or renting real estate, or interests therein, including mineral rights or leases, of others; and every person who shall take any part in the procuring of sellers, purchasers, lessors or lessees of the real property, or interests therein, including mineral rights or leases, of another; or who shall direct or assist in the procuring of prospects, or the negotiation or closing of any transaction which does, or is calculated to, result in a sale, exchange, or leasing thereof, and who shall receive, expect, or be promised any compensation or valuable consideration, directly or indirectly therefor; and all persons who are members of partnerships or officers or directors of corporations engaged in

performing any of the aforesaid acts or services; each and every such person shall be deemed and held to be a "real estate broker" or a "real estate salesman," as hereinafter classified, unless said person when performing the act or acts herein specified shall be acting as an attorney-in-fact for the purpose of the execution of contracts or conveyances only, or as an attorney-at-law within the scope of his duties as such, or when acting as the administrator, executor, receiver, trustee, or master under or by virtue of an appointment by will or by order of a court of competent jurisdiction, or as trustee under a deed of trust, or under a trust agreement, the ultimate purpose and intent whereof shall be charitable, philanthropic, or providing for those having a natural right to the bounty of

the donor or trustor; nor shall the term broker or salesman be applied to a person who shall deal with property in which he is a part owner, unless said person shall receive a larger share of the proceeds or profits from the transaction than his proportional investment therein would otherwise justify, such excess share being directly or indirectly the result of the service of buying, selling, exchanging or leasing said property; nor shall said terms be applied to one officer of every corporation engaged in the sale of its own properties who shall be its president unless otherwise provided in its charter or by-laws, if said corporation shall not otherwise be classed as a real estate broker or a salesman.

§48.193, Fla. Code Ann.

Acts subjecting persons to jurisdiction of courts of state

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:

(a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.

(b) Owns, uses or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within

this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in

solicitation or service activities in this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade or use and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts f this state as provided in this section may be made by personally serving the process upon the defendant outside this state, as provided in §48.194. The service shall have the same

effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.

Added by Laws 1973, c. 73-179, §1, eff. July 1, 1973.

§48.181 Fla. Code Ann.

(1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who is a resident of the state and who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the secretary of state of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction

or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.

(2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.

(3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers or distributors to any person, firm or corporation in this state shall be conclusively presumed to be operating,

conducting, engaging in or carrying on a business venture in this state.

28 U.S.C.A. §1257

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution,

treaties or laws of the United States, or where any title, right privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

UNITED STATES CONSTITUTION

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . . .

Article 1, §8, United States Constitution

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes;

. . . .

PROMISSORY NOTE

Payable in 15 total installments: (10 installments of interest only and 5 installments of principal and interest). $215,070.00 Atlanta, Georgia February 8, 1974

FOR VALUE RECEIVED, I promise to pay to Hilton and Associates, a partnership, consisting of L. Charles Hilton, Jr., Charles E. Faircloth and William C. Grimsley, Jr. the principal sum of TWO HUNDRED FIFTEEN THOUSAND SEVENTY AND 00/100 DOLLARS ($215,070.00) in lawful money of the United States of America, payable at: 3130 Maple Drive, N.E., Suite 1, Atlanta, Georgia, 30305, or such other place as the holder hereof may from time to time designate in writing, together with interest thereof from date, at the rate of six (6%) per cent, per annum, payments of principal

and interest to be made as follows:

Years	Principal	Interest
1-10	None	$12,904
11	$43,014	12,094
12	43,014	10,323
13	43,014	7,742
14	43,014	5,161
15	43,014	2,580

All payments shall be due and payble on the respective annual anniversary date of the date first above set forth.

Each installment, when paid, shall be applied first to the payment of interest accrued on unpaid principal, and the residue thereof shall be credited on the principal. The indebtedness evidenced by this Note may be prepaid, either in whole or in part, without any penalty whatsoever (other than accrued interest on the amount so prepaid) at any

time.

All partial prepayments of principal shall be applied cumulatively toward the principal portion of installments next due. Prepayments of principal shall be accompanied by interest at said rate on the amount of principal so prepaid, computed from the last regular installment date or the date of this NOte, whichever is the most recent. If on any subsequent regular installment payment date no principal is payable due to previous partial prepayments being cumulatively applied, interest on the unpaid principal balance shall be paid, irrespectively.

Any payment of principal or interest which is not made when due, as herein provided, shall bear interest at the rate of nine (9%) per cent, per annum until paid.

This note is secured by a mortgage, bearing even date herewith, executed by the undersigned in favor of the Payee herein, conveying the property described in Exhibit A, attached hereto.

Reference is made to said mortgage for any provision concerning notice prior to acceleration of this indebtedness; any such provision shall be deemed incorporated herein. The holder of this note shall have the optional right to declare the amount of the total unpaid balance hereof to be due and forthwith payable in advance of the maturity date of any installment as fixed herein, upon the failure of the maker to pay, when due, any one of the installments hereon, or to comply with and perform any condition or covenant contained in the mortgage securing this note. Forbearance to exercise this option with respect to

any failure or breach of the maker shall not constitute a waiver of the right as to any subsequent failure or breach.

Time is of the essence, and in case this note is collected by law or through an attorney at law, or under advice therefrom the undersigned agrees to pay all costs of collection, including reasonable attorney's fees.

Notwithstanding any of the provisions of the mortgage securing payment of this NOte to the contrary, and notwithstanding any of the provisions of this NOte to the contrary, Payee covenants and agrees with Maker that in the event that the Payee should at any time take action to enforce the collection of the indebtedness due him or them, as evidenced by this Note, he or they will first proceed by foreclosure of the mortgage instead of instituting suit

upon the Note, and in the event that as a result of said foreclosure and the sale of the property herein described, a lesser sum is realized from the sale of the security than the amount then due and owing upon said NOte or pursuant to the provisions of the mortgage, said Payee will never institute any action, suit, claim, or demand in law or in equity against said Maker or any assignee of Maker or joint venturer with Maker for or on account of such deficiency, provided however, that nothing in this paragraph contained shall in any way affect or impair the lien of the mortgage to secure debt or any representation or warranty of title made herein by the Maker, all of which shall remain in full force and inure to the benefit of the Payee and to any insurer of the title of the premises.

The expression hereinabove that "Payee

will first proceed by foreclosure of the mortgage instead of instituting suit upon the Note" shall not be deemed to deny payee the power of sale accorded in the mortgage or restrict Payee at any time in the exercise of that right or any right herein provided to enforce the mortgage as to the security given to secure same.

It is the intention of the Maker of this Note and the understanding of the Payee of this Note which shall be binding upon all subsequent holders and transferees that the liability of the Maker of this Note is limited to the security encumbered by the mortgage securing payment of this Note and that the Maker hereof shall not be held personally responsible for any payment of principal, interest, costs or attorneys' fees to payee and his or their assigns and subsequent holder of this Note.

A default under the Mortgage securing this Note or under the note of even date in the principal amount of _____ payable to Hilton & Assocaites and executed by the maker hereof shall constitute a default hereunder.

The undersigned and all endorsers or other parties to this note hereby waive presentment, demand for payment, protest and notice of non-payment.

Given under the hand and seal of each party.

S/LAWRENCE E. COOPER, (SEAL)

LAWRENCE E. COOPER, M.D.

PAY TO THE ORDER OF:

John P. Paris d/b/a Paris Properties

without recourse.

Hilton & Associates

by: S/L. Charles Hilton, Jr.

By: S/Charles E. Faircloth

By: S/William C. Grimsley, Jr.

PROMISSORY NOTE

$75,000 Atlanta, Georgia

February 12, 1974

On demand, the undersigned promises to pay to John P. Paris, d/b/a Paris Properties, or order, the sum of Seventy-Five Thousand Dollars with interest at the rate of 6% per annum from the date hereof, at 3130 Maple Drive, N.E., Atlanta, Georgia.

If this note is not paid on demand, the undersigned shall pay all costs of collection including reasonable attorneys' fees incurred by the holder in enforcing such collection.

S/ LAWRENCE E. COOPER

Lawrence E. Cooper

POINTS ON APPEAL

POINT ONE

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT BECAUSE THE RECORD REFLECTED THAT THERE WERE GENUINE ISSUES OF MATERIAL FACT WHICH HAD NOT BEEN RESOLVED.

POINT TWO

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT, IN THAT IT IS CONTRARY TO THE LAW OF FLORIDA, BECAUSE IT APPLIES THE LAW OF FLORIDA TO PROMISSORY NOTES WHICH SHOULD BE CONSTRUED ACCORDING TO THE LAW OF GEORGIA.

POINT THREE

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT BECAUSE, CONTRARY TO THE LAW OF FLORIDA, THE TRIAL COURT FAILED TO STRICTLY CONSTRUE A PENAL STATUTE.

POINT FOUR

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT, IN THAT IT HAS FAILED TO PROPERLY CONSTRUE AND APPLY THE FLORIDA REAL ESTATE LICENSE LAW, FOR THE PURPOSE OF PROTECTING THE PUBLIC FROM UNTRAINED OR UNSUPERVISED REAL ESTATE OPERATORS.

POINT FIVE

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT, IN THAT IT IS CONTRARY TO THE LAW OF FLORIDA, BECAUSE SAID FINAL SUMMARY JUDGMENT WOULD ENABLE ONE PARTY TO GAIN AN UNCONSCIONABLE ADVANTAGE BY AVOIDING A JUST OBLIGATION WHICH HE HAD CONTRACTED TO PAY.

POINT SIX

THE TRIAL COURT ERRED IN ENTERING ITS FINAL SUMMARY JUDGMENT AND ITS SUBSEQUENT ORDER DENYING MOTION FOR REHEARING, BECAUSE THE MOTION FOR REHEARING

SUBMITTED ADDITIONAL EVIDENCE MATERIAL TO THE ISSUES OF THE CASE.

"PETITION POINT FIVE"

THE DECISION BY THE TRIAL COURT AND THE FIRST DISTRICT COURT WORKS A TAKING OF PARIS' PROPERTY WHICH IS PROSCRIBED BY THE FLORIDA AND U.S. CONSTITUTIONS.

I. INTRODUCTION

No compelling public policy is being served, nor public benefit obtaine, that justifies the destruction of PARIS' property (his note and his mortgage).

II. NOTE AND MORTGAGE ARE "PROPERTY"

Both the Florida and the U.S. Constitutions have provided protection for personal, as well as real, property from summary or arbitrary alteration by Trial Courts.

> "All natural persons are equal before the law and have inalienable rights, among with are the right to . . . possess and protect property . . . "

Constitution of the State of Florida, Article I, Sect. 2

Our Florida Supreme Court has, further, held that a mortgage is indeed entitled to constitutional protection:

> "While in this state it is held that a mortgage does not convey the legal title or right of possession, but merely constitutes a specific lien on the property therein described [citation], such lien is itself a species of intangible property, of which the holder cannot be deprived without due process . . . "

Seaboard All-Florida RY. v. Leavitt, et al., 141 So2d 886 at 889 (S.Ct.1932).

And, in spite of some disturbing contemporary trends, rights in property continue to be entitled to protection in

our Florida courts:

> "It has long been recognized that the rights in property are basic civil rights."

Corn v. State, 322 So2d 4 at 7 (S.Ct.1976)

In Corn, supra., the Supreme Court even went further and held that the Courts have a duty to protect property rights:

> "While we have many regulatory measures protecting civil rights of citizens, we also have constitutional duty to protect rights of property and the business community."

Corn v. State, supra.

III. CONCLUSION

Thus, the Trial Court has overlooked these fundamental guarantees in both Constitutions, and, instead, has

chosen to judicially extend Ch. 475 to apply to Georgians, and to transactions between Georgians. In doing this, the Trial Court has crushingly deprived JOHN PARIS of his ". . . property . . ." (U.S. Constitution, Art. XIV), and denied him the right ". . . to be rewarded for industry . . ." (Fla. Constitution, Art. I).

These results can hardly have been consciously intended by the First District Court, and should therefore be reversed.